In the

Supreme Court of the United States

October Term, 1976

No. 76-717

NELSON BUNKER HUNT AND WILLIAM HERBERT HUNT,
Petitioners,

v.

PAN AMERICAN ENERGY, INC., a North Dakota corporation, MOBIL OIL CORPORATION, a New York corporation, and MELVIN ("Pat") BALLANTYNE,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENTS PAN AMERICAN ENERGY, INC., a North Dakota corporation, and MELVIN ("Pat") BALLANTYNE IN OPPOSITION

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December, 1976

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OPINIONS BELOW

The Memorandum of Decision and Order of the District Court was not reported and appears in the Appendix of Petition at page 29. The Opinion of the Court of Appeals for the Eighth Circuit (page 71 of Appendix of Petition) is reported at 540 F.2d 894.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTION PRESENTED

Whether the Hunts have established that there are special or important reasons for granting this writ, as required by Supreme Court Rule (1) (b).

STATUTES INVOLVED

There are no statutes, federal questions or constitutional provisions involved in this case.

STATEMENT OF THE CASE

The first five paragraphs of the Petitioners' (Hunts') Statement of the Case are accurate. Thereafter, their statement is inaccurate and incomplete and does not recite those facts which support the findings of the District Court and the Eighth Circuit Court.

In 1971, the Respondent, Pat Ballantyne, and his brother, Russell, became interested in the coal exploration that was going on in North Dakota. Many companies, including Hunts, had already began an active program to explore and lease coal deposits in North Dakota. Pat and Russell Ballantyne farm in North Dakota and they have also been active over the years in oil and gas leasing and exploration and in other ventures.

When the Ballantynes became interested in coal in 1971, they began talking to farmers and reading and reviewing government data, railroad bulletins, waterwell data and other published information relating to coal in North Dakota. They made repeated checks in the Register of Deeds offices in the various courthouses in North Dakota during 1971 and 1972 to determine which companies were leasing and where they were leasing. The Ballantynes formed Pan American Energy, Inc., as a nominee corporation for the sole purpose

of holding title to the coal leases which they were taking. It was the Ballantynes' idea that they would try to buy leases in those areas where there was published information showing the presence of coal and where the major energy companies were leasing.

In 1973, Ballantynes decided to try and sell the leases they had obtained to a major oil company. Contacts were made with City Service, Northern National Gas, Atlantic Richfield, Sun Oil and the ultimate purchaser, Mobil Oil. They had little luck in interesting these companies in their leases and they decided that if they had a "thicker file," they might be able to interest a major oil company. Pat Ballantyne's son, Todd Ballantyne, age 22, had been employed as a logger for Hunts for two months in 1972 and in his job had acquired what he called "memory sheets" where he jotted down the location and also the identification number of a few of the Hunt drill or test holes. He needed this information in his work as a logger. There was nothing confidential about the information on those memory sheets. All they showed was the location where the hole had been drilled and Hunt's identification number for each hole. The location of these holes would have been obvious to anyone who was in the area and had talked to the farmers or who had seen the drilling rigs or the debris left by the drilling rigs. The memory sheets did not give any indication as to whether or not coal was found in these test holes.

Hunts' statement that Todd Ballantyne admitted making and taking copies of Hunts' logs without permission is a misrepresentation of the evidence, because it infers he copied something of value. It is correct that Todd admitted copying three drill logs from McKenzie County and seven logs from Stark County as souvenirs of his work. Todd was 22 years of age, had been attending the University of Texas and wanted to show his friends samples of what he was doing during the year. These logs that he copied did not show any commercial coal and had no geophysical value. Todd did not

even know the location or legal description for the seven souvenir logs that he copied in Stark County. He also made copies of four logs of an area surrounding the "Hanel" farm which was property owned by his father. The logs did not show any commercial coal and were not within the Hunt buy-area. Further, Ballantynes did not lease near the Hanel farm nor near the areas covered by the McKenzie County and Stark County logs.

The above is the extent of the information which Todd Ballantyne obtained during his employment by Hunts. Hunt had drilled 2200 test holes during their coal exploration work in North Dakota and Todd only copied 14 logs, none of which showed commercial coal and all of which were outside the Hunt buy-areas. Further, the few logs that Todd copied as souvenirs and the information on the memory sheets were not turned over to his father, Pat Ballantyne, until the late summer of 1973 when Pat was trying to build a "thicker file" and by then, basically all of the leasing had been completed.

The Ballantynes leased coal in North Dakota based on the knowledge they obtained from published data, from talking with farmers, from watching where major oil companies were drilling and testing for coal and primarily from watching where major companies, like Hunt, were leasing. The chief landman for the Hunt Oil Company in North Dakota admitted that a competitor could determine the Hunt buy-areas by following this process and that there was nothing improper about doing so. (Appendix to the Petition, page 53). Further evidence that Ballantynes did not have Hunts' confidential data is that a substantial majority of Ballantynes' leases are outside Hunts' buy-areas and according to Hunts' geologists, are in areas where there is no commercial coal.

This case was tried to the Court without a jury, the trial commencing on March 10, 1975, and concluding on March 21, 1975. The transcript of testimony consisted of 1,826 pages and there were in excess of 3,000 exhibits offered and received in evidence. Some 43 depositions were taken during the

discovery process and the testimony of 28 witnesses was presented during the trial.

On August 18, 1975, Judge Benson filed his Memorandum of Decision and Order which was 42 pages in length. In his decision, Judge Benson reviewed and analyzed each of Hunts' arguments and weighed the evidence introduced to support those arguments. In each and every instance, Judge Benson found that the Hunts failed to prove that the Ballantynes had used Hunts' confidential data in acquiring its coal leases.

Judge Benson's judgment of dismissal was appealed by the Hunts to the Eighth Circuit Court. The Eighth Circuit Court reviewed and answered every argument and issue raised by the Hunts in their appeal and carefully analyzed and reviewed the evidence and issued a 40-page opinion affirming the District Court.

ARGUMENT

The Hunts Have Failed To Establish That There Are Special Or Important Reasons For Granting This Writ As Required By Supreme Court Rule 19(1) (b).

The Hunts do not allege nor does the record establish that there are any federal or constitutional questions involved; nor is there a conflict in the decisions of the Courts of Appeals; nor does the Circuit Court's decision conflict with the applicable state law. Hunts only claim is that the Supreme Court should exercise its power of supervision over the lower courts because the lower courts made an erroneous decision in formulating the issues and in their findings of fact.

They say this even though the District Court in its Memorandum Decision carefully set forth the one real issue in this case:

> "Were leases of Pan American acquired as a result of Hunts confidential information?" (Appendix to Petition, page 35).

Whether Hunts claim is for a constructive trust or for damages, the issue is as stated by the District Court. The District Court carefully and thoroughly reviewed all of the evidence and found that Hunts had failed to meet their burden of proof on this issue. The Circuit Court made an exhaustive review on the facts and affirmed the District Court.

This unsupported allegation that the lower courts made an erroneous decision on factual questions is certainly not sufficient to require the Supreme Court to exercise its supervisory authority over the lower Courts. Chief Justice Vinson in his address to the American Bar Association, September 7, 1949, 69 S. CT. v, vi, answered Hunts contention when he said:

> " 'The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions. In almost all cases within the Court's appellate jurisdiction, the petitioner has already received one appellate review of his case. The debates in the Constitutional Convention make clear that the purpose of the establishment of one supreme national tribunal was, in the words of John Rutledge of South Carolina, 'to secure the national rights and uniformity of judgments.' The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over lower federal courts. If we took every case in which an interesting legal question is raised, or our prima facie impression is that the decision below is erroneous, we could not fulfill the Constitutional and statutory responsibilities placed upon the Court. To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved.' "

The quote of Judge Vinson fits this case perfectly. What the Hunts are attempting to do here is pose a legal question as to whether or not the North Dakota Supreme Court would find that the burden of proof necessary to establish a constructive trust is different than the burden of proof to recover damages in an action based on alleged wrongful use of confidential geophysical data in obtaining coal leases. Certainly this is not something that this Court should attempt to answer because it has no national or public importance whatsoever. See also Layne and Bowler Corp. v. Western Well Works, 261 U.S. 387; Rice v. Sioux City Cemetery, 349 U.S. 70; U.S. v. Johnson, 268 U.S. 220.

This argument by the Hunts that there is a different burden of proof under North Dakota law to establish a constructive trust rather than to recover damages in cases involving alleged misappropriation of geophysical data was never presented to either the District Court or to the Circuit Court. The Hunts contended throughout the trial in the District Court and in their appeal to the Circuit Court that they were entitled to a constructive trust on the leases taken by Pan American and never once did they argue that there was a different burden of proof as to the issue of damages. Their position in the District and Circuit Courts is best set forth by the last paragraph of the Conclusion of the Hunts Appellate Brief to the Circuit Court, page 56, which states:

> "Plaintiffs earnestly contend that when 'the qualitative factor of the truth and right of the case' is considered, this Court must be left with 'the impression that a fundamentally wrong result has been reached.' The Hunts further contend that this Court may and should substitute its judgment for that of the Trial Court, correctly find the facts in this case from the evidence adduced and remand the case to the Trial Court with instructions to

> enter judgment for the Hunts, and impress upon the leases held by Mobil, and purchased from Pan Am a constructive trust in favor of the Hunts."

The first time Hunts have ever proposed this theory that there is a different burden of proof in a claim for constructive trust as opposed to a claim for damages was when they filed their petition for a writ of certiorari with this Court. We submit that this question cannot be raised for the first time in the United States Supreme Court. Minnich v. Gardner, 292 U.S. 48; Sonzenski v. United States 300 U.S. 506; 4 CJS Appeal and Error, Section 228, page 665.

As stated before, the decisions of the District Court and of the Circuit Court involved complicated fact questions involving the interpretation of maps and geological data, the evaluation and weight to be given conflicting oral testimony and the credibility of the various witnesses. The factual findings of both the District Court and the Circuit Court were that the Hunts had failed to prove a casual connection between the alleged wrong doing on the part of Ballantynes and the leases which they obtained. We submit that the two lower courts answered every issue and every question presented to them by the Hunts. The Hunts have refused to recognize those facts found by the lower courts which are contrary to their position.

The findings and the decision of both of the two courts below are well supported by the record. It is not the function of the U.S. Supreme Court to become a sifter of complicated factual findings in determining whether or not to grant a writ of certiorari.

> "The Supreme Court is a court of law rather than a court for correction of errors in fact finding, and cannot undertake to review concurrent findings of fact by two courts below, in absence of very obvious and exceptional showing of error." Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275, and cases cited; Berenyi v. Immigration Director, 385 U.S. 630, 635.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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